

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LAURA GARRETT and MICHAEL	§	
GARRETT, SR., individually and as	§	
representatives of the Estate of Michael	§	
Garrett, Jr., Deceased,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
COMAL COUNTY; MARK W.	§	CASE NO. 5:21-CV-00803-JKP-RBF
REYNOLDS, individually and as the	§	
Comal County Sheriff; OFFICER	§	
ORLANDO MENDOZA; OFFICER	§	
ROMO; OFFICER GONZALEZ;	§	
OFFICER OZUNA; EMT ERICA	§	
ROSALES; and SERGEANT THOMAS	§	
GARZARECK,	§	
Defendants.	§	

**PLAINTIFFS' APPENDIX TO RESPONSE TO SUMMARY JUDGMENT**

Plaintiffs Laura Garrett and Michael Garrett, Sr., individually and as Representatives of the Estate of Michael Garrett, Jr., Deceased, hereby files this Appendix in support of Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment.

**STATEMENT OF MATERIAL FACTS**

**a. Arrest and arrival at the Comal County Jail**

On December 7, 2019, 18-year-old Michael Eien, Garrett Jr., was riding in the back seat of a vehicle being driven by his cousin, John Paul Garces in New Braunfels, Texas.<sup>1</sup> New Braunfels Police Department Officer Patrick Akers alleges that at about 21:54PM he observed the Oldsmobile fail to stop at a designated stop point.<sup>2</sup> After following the Oldsmobile, Officer Akers

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<sup>1</sup> Exhibit 1, Affidavit for Probable Cause for Arrest, p. 1.

<sup>2</sup> Exhibit 1, p. 1.

claims that when the Oldsmobile cut across a parking lot to make a turn, he noticed the temporary tag on the vehicle was obstructed and he couldn't read the license plate due to something covering up the numbers (which was latter determined to be condensation).<sup>3</sup> Officer Akers activated his overhead lights and Officer Akers observed the left rear male making furtive movements towards his right side.<sup>4</sup> While the K-9 conducted an air sniff of the vehicle, Officer Dowell located a clear plastic baggie in the back-seat area stuffed down near the seatbelt where Michael was sitting.<sup>5</sup> Inside the baggie, Officer Akers found residue of a white crystalized substance Officer Akers believed to be methamphetamines.<sup>6</sup> After Officer Akers interrogated Michael he admitted to placing the baggie near the seat buckle.<sup>7</sup> At 23:01 PM Michael Garrett and John Garces were arrested for Possession of Controlled Substance PG1<1 Gram.<sup>8</sup> John also received a warning for an obstructed plate and cutting across a driveway/parking lot to make turn. Michael Garrett, Jr. and his cousin John Paul Garces arrived at the Comal County Jail at 2310.<sup>9</sup> On December 8, 0050, Michael Garrett was placed in a WRAP restraint.<sup>10</sup> At 0123, EMS was called when Officer Gonzalez discovered Michael, unresponsive and purple in the face.<sup>11</sup> EMS arrived at 0131 and at 0151, EMS departed with Michael to the Hospital.<sup>12</sup> Upon arrival at the Comal County Detention Center, arresting officer Patrick Akers reported to jail staff, "So I don't know if he tried to stuff something, you know he had a meth pipe stuffed right to the right

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<sup>3</sup> Exhibit 1, p. 1.

<sup>4</sup> Exhibit 2, p. 2.

<sup>5</sup> Exhibit 3, p. 3.

<sup>6</sup> Exhibit 3, p. 3.

<sup>7</sup> Exhibit 3, p. 3.

<sup>8</sup> Exhibit 3, p. 3.

<sup>9</sup> Exhibit 4, Comal County Sheriff's Department Report, (CCSO3718)

<sup>10</sup> Exhibit 5, CCSO Daily Security Walk Log, (CCSO3718)

<sup>11</sup> Exhibit 5, CCSO Daily Security Walk Log, (CCSO3718)

<sup>12</sup> Exhibit 5, CCSO Daily Security Walk Log, (CCSO3718)

side of his seat. And then this guy here had a baggie stuffed on his seat. They're both cousins so just be careful on the one to the right he's I don't know they've both been warned if there's anything illegal on their person."<sup>13</sup>

When Michael first arrived at the Comal County Detention Facility he was anxious, but cooperative.<sup>14</sup> In the garage of the sally port, the officers first noticed Michael was anxious and immediately suspected Michael had ingested drugs.<sup>15</sup> When Michael entered the jail facility he was wide-eyed and fidgety, not making eye contact but able to comply with most of the officer's directions during a search process. Michael's condition prompted one officer to ask, "Why you so nervous man?"<sup>16</sup> "You sure you didn't take anything?"<sup>17</sup> During the pat search process Officer Ozuna observed Michael shaking, sweating, breathing hard, and looking around as if he was paranoid.<sup>18</sup> Officer Gonzalez asked if Michael had taken any drugs recently to which he wouldn't say anything.<sup>19</sup> Officer Gonzalez continued the pat search with Michael still restrained in handcuffs "due to his strange behavior."<sup>20</sup>

**b. Michael's condition deteriorates**

After the pat down, Michael was escorted to the side bench to complete the MHDD assessment.<sup>21</sup> Because of Michael's lack of capacity, he could not answer or respond to the question of EMT Rosales. As a result, Officer Romo placed Michael on the side bench for a medical

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<sup>13</sup> Exhibit A, Body cam video, GONZALEZ GUNGATE (CCSO3650), 00:01-00:20 [Defs.' Ex. A-4 to Doc. 61-2]

<sup>14</sup> Exhibit D, Body cam video, MENDOZA GUNGATE—(CCSO3651), 04:50–05:41

<sup>15</sup> Exhibit B, Body cam video, GONZALEZ GUNGATE (CCSO3650), 02:30-02:45.

<sup>16</sup> Exhibit C, Body cam video, MENDOZA GUNGATE—(CCSO3651), 01:20–01:30

<sup>17</sup> Exhibit C, Body cam video, MENDOZA GUNGATE—(CCSO3651), 01:20–01:30

<sup>18</sup> Exhibit 6, Ozuna Narrative (CCSO003640) [Defs.' Ex. A-8 to Doc. 61-2]

<sup>19</sup> Exhibit 6, Ozuna Narrative (CCSO003640) [Defs.' Ex. A-8 to Doc. 61-2]

<sup>20</sup> Exhibit 6, Ozuna Narrative (CCSO003640) [Defs.' Ex. A-8 to Doc. 61-2]

<sup>21</sup> Exhibit 7, Incident Statement - Officer Romo

evaluation at a later time.<sup>22</sup> At about 12:15 am, Officer Romo and Officer Mendoza escorted Michael to C1 dress out room to complete a strip search requested by Officer Akers.<sup>23</sup> At this point in time, Michael is standing and officers appear to be asking him to remove his underwear (“Just gotta drop em”).<sup>24</sup> According to Officer Romo, Michael refused to remove his underwear in order for the strip search to be conducted and proceeded to sit on the floor.<sup>25</sup> Officers Romo and Mendoza observed that Michael was incoherent and disoriented, not responding to questions or verbal commands.<sup>26</sup> Several officers suspected Michael ingested narcotics.<sup>27</sup>

By this time Michael’s symptoms had elevated to rocking back and forth, tapping, wringing his hands, rubbing his hands, constant head movements, heavy breathing, sweating, shaking, and moving his arms around constantly.<sup>28</sup> Michael was no longer able to respond or take directions from officers. The only time Michael appears to have understood something an officer was saying was immediately after the officer says his name, “Michael”.<sup>29</sup>

Officer Mendoza called Sergeant Garzareck to assist.<sup>30</sup> EMT Rosales was called in order to check Michael’s vitals due to his rapidly deteriorating state.<sup>31</sup> When EMT Rosales entered the

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<sup>22</sup> Exhibit 7, Incident Statement - Officer Romo

<sup>23</sup> Exhibit 8, Incident Statement – Officer Mendoza; Exhibit 7, Incident Statement - Officer Romo; Exhibit 9, Body cam video, MENDOZA #1—(CCSO3664).

<sup>24</sup> Exhibit 9, Body cam video, MENDOZA #1—(CCSO3664)

<sup>25</sup> Exhibit 7, Incident Statement - Officer Romo

<sup>26</sup> Exhibit 7, Incident Statement - Officer Romo; Exhibit 8, Incident Statement – Officer Mendoza (“During this time he showed signs of a possible intoxicant, he was sweating profusely, incoherent, disoriented, and nonverbal.”)

<sup>27</sup> See Exhibit 9, Body cam video, MENDOZA #1—(CCSO3664), at 05:00–05:40 (“Let me ask you something, did you, what did you take today?”); (“Did you eat anything?”); (“Did you smoke anything?”); (“Michael, we’re trying help you out, man okay? Okay, well then work with us, alright?”); (“Obviously something’s wrong with you, okay?”); and Exhibit 9, Body cam video, MENDOZA #1 (CCSO3664), 12:50-12:59 (“What did you take tonight?”)

<sup>28</sup> Exhibit 10, Body cam video, GARZARECK #1—(CCSO3660); Exhibit 9, Body cam video, MENDOZA #1—(CCSO3664) at 11:52–

<sup>29</sup> Exhibit 9, Body cam video, MENDOZA #1—(CCSO3664), 8:44-9:17

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<sup>31</sup> Exhibit 8, Incident Statement – Officer Mendoza

dress-out room, Officer Mendoza suggested talking to Michael's cousin John Garces in order to "Ask [Garces] again what [Michael] took."<sup>32</sup> EMT Rosales asked Michael if she can take his vitals.<sup>33</sup> However, Michael was no longer able to respond.<sup>34</sup> The following exchange between Sergeant Garzareck and EMT Rosales was recorded on Sergeant Garzareck and Officer Mendoza's body cam videos:

EMT ROSALES            He has like superbad anxiety.

SGT. GARZARECK            Yeah. That's what I'm getting out of him.

EMT ROSALES            Because it looks like he's going to calm himself down a little bit and [unintelligible].

EMT ROSALES            ***But he's also on something.***

Exhibit 10, Body cam video, GARZARECK #1—(CCSO3660) 03:14–03:39; Exhibit 11, Body cam video, MENDOZA #2—(CCSO3665), 02:20–1:35.

At some point Michael was placed on "suicide watch." The County has a practice of putting people on suicide watch if they are "unable to get any information from the inmate" or "if they refuse to answer"<sup>35</sup> When EMT Rosales asked where the officers were going to move Michael, Officer Mendoza answered, "Detox"<sup>36</sup> Exhibit X, Body cam video, MENDOZA #2—(CCSO3665), 02:49–3:11. At this point Sergeant Garzareck decides that they are going to put Michael in a suicide gown, cover him up and move him into a "Violent Cell".<sup>37</sup> Michael was

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<sup>32</sup> Exhibit 11, Body cam video, MENDOZA #2—(CCSO3665), 01:00–01:27

<sup>33</sup> Exhibit 10, Body cam video, GARZARECK #1—(CCSO3660) 01:26

<sup>34</sup> Exhibit 10, Body cam video, GARZARECK #1—(CCSO3660) ("Is that a, no? Can you say no? Or say yes? Can you talk?"); Exhibit 8, Incident Statement – Officer Mendoza

<sup>35</sup> (Deposition of Sgt Garzareck, Page 31, lines 5-13); (Deposition of Officer Gonzales, Page 44, lines 20-25).

<sup>36</sup> Exhibit 11, Body cam video, MENDOZA #2—(CCSO3665), 02:49–3:11.

<sup>37</sup> Exhibit 12, Body cam video, MENDOZA—(CCSO3658), 03:50-04:03

advised that the officers were going to forcibly “assist him out of his underwear and into a suicide gown in order to be placed in VC2 for medical observation.”<sup>38</sup>

However, the officers were unable to change Michael into a suicide gown.<sup>39</sup> When the officers attempted to lift Michael up off the floor to remove his underwear, they were unable to get a secure grip on his arms due the heavy sweating.<sup>40</sup> Once the officers were able to place Michael face down on the floor and handcuff his hands behind his back, they were able to place the suicide gown over Michael’s naked body.<sup>41</sup> While the officers were struggling to get Michael’s arms behind his back, Sergeant Garzareck asks for the WRAP restraint device.<sup>42</sup>

**c. The officers force Michael into the WRAP restraint and abandon him in front of the control room**

Rather than escort Michael to VC for medical observation, Sergeant Garzareck changed plans and decided to place Michael in the WRAP restraint system. Michael was on the floor, distressed, restrained and still deteriorating when Sergeant Garzareck ordered the other officers to force Michael into a WRAP restraint.<sup>43</sup> The officers attempted to place Michael into the WRAP restraint.<sup>44</sup> Michael struggled with officers while moaning and often incoherent.<sup>45</sup> The officers were eventually able to force Michael into the WRAP restraint.<sup>46</sup> Michael was then lifted into the WRAP cart and moved to the side of the control room.<sup>47</sup>

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<sup>38</sup> Exhibit 7, Incident Statement - Officer Romo

<sup>39</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>40</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>41</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>42</sup> Exhibit 12, Body cam video, MENDOZA—(CCSO3658), 07:05 (“Actually get the WRAP.”)

<sup>43</sup> Exhibit 10, Body cam video, GARZARECK #1—(CCSO3660)

<sup>44</sup> Exhibit 13, Body cam video, GARZARECK #2—(CCSO3661) at 00:24–00:52; Exhibit 12, Body cam video, MENDOZA—(CCSO3658) at 05:45–09:37, 09:40–09:54

<sup>45</sup> Exhibit 12, Body cam video, MENDOZA—(CCSO3658), 09:55–12:39

<sup>46</sup> Exhibit 12, Body cam video, MENDOZA—(CCSO3658), 09:55–12:39; Exhibit 8, Incident Statement – Officer Mendoza

<sup>47</sup> Exhibit 8, Incident Statement – Officer Mendoza

**d. While escorting another inmate, Officer Gonzalez happens to notice Michael is unresponsive**

The officers walk by without checking on Michael as he struggles.<sup>48</sup> Around 0122, while escorting another inmate, Officer Gonzales glances at Michael and notices he is slumped over, purple, and unresponsive.<sup>49</sup> At about 0123, a call for medical assistance was made over the radio to respond to Michael in the WRAP.<sup>50</sup> According to Officer Mendoza, when the call for assistance was made, he remained in the control room.<sup>51</sup> Officer Mendoza called Dispatch and requested EMS.<sup>52</sup> EMS arrived at approximately 0131.<sup>53</sup>

When asked why Michael required “continuous monitoring,” Defendant Garzareck stated that “The more is better. I would rather keep a continuous observation of the inmate rather than see the inmate every 15 minutes.”<sup>54</sup> However, instead of constantly monitoring Michael, the officers parked him in front of the control room and left him there for 32 minutes. All of this—forced into the WRAP, propped up in a chair, rolled over to the control room, and left alone for over 30 minutes—was captured by the Comal County Detention Center’s Front Control Overhead CCTV. According to the suicide prevention report between when Michael was restrained at 0015, he was awake and agitated.<sup>55</sup> Between 0015 and 0050 corresponding numbers representing unresponsive, non-verbal and disoriented were added to each entry on

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<sup>48</sup> Exhibit 14, CCTV video, FRONT CONTROL OVERHEAD Pt1—(CCSO3653), 01:50–03:20

<sup>49</sup> Exhibit 14, CCTV video, FRONT CONTROL OVERHEAD Pt1—(CCSO3653) at 01:50–03:20; see also Exhibit 15, Body cam video, GONZALEZ 3308 #1—(CCSO3657) at 06:50–07:00

<sup>50</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>51</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>52</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>53</sup> Exhibit 8, Incident Statement – Officer Mendoza

<sup>54</sup> (Deposition of Sgt. Garzareck, Page 39, lines 14-17).

<sup>55</sup> Exhibit 16, Suicide Prevention Report

the observation report.<sup>56</sup> Michael was placed on medical monitoring, yet the only time any of the Defendants checked on Michael were after he had already arrested and was brain-dead.

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<sup>56</sup> Exhibit 16, Suicide Prevention Report